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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

REEVES CATT, TRUSTEE, v. WM. KNABE & CO. MANUFACTURING Co.—Decided at Richmond, November 19, 1896.—*Keith*, P:

1. DEED OF TRUST.—*Fraud per se*—*Liability of corpus of trust fund for debts created by trustee*—*Case at bar*. A deed of trust to secure creditors, which postpones the sale of the property conveyed for a reasonable time, or which authorizes the trustee to continue the business and replenish the stock, or which contains other like provisions, merely for the purpose of realizing the best results, is not fraudulent *per se*. But a deed which subjects the *corpus* of the trust fund to liability for debts incurred by the trustee in the administration of the trust, confers powers adequate to defeat the trust, and is for that reason void. In the case at bar, the deed conveys to a trustee real and personal property consisting of buildings, and furniture and appliances suitable for the conduct of a school, and authorizes the trustee to conduct a school for a period of eighteen months, and to that end to employ all necessary tutors and other agents, and to pay them out of the trust fund, and prefers the salaries of such tutors and agents, and the running expenses of the school to the creditors secured. The deed is fraudulent *per se*. The trust fund, in part at least, is the property conveyed, and this is subjected to the hazard of the successful operation of the school, which is not allowable.

BALTIMORE & OHIO RAILROAD CO. v. FEW'S EX'OR.—Decided at Richmond, December 3, 1896.—*Cardwell*, J:

1. INSTRUCTIONS—*Lack of evidence to support*. An instruction should not be given when there is no evidence to support it. In the case at bar there was no evidence to support one of the instructions given, and the tendency of the instruction was to mislead the jury.

2. INSTRUCTION—*Objection by party asking it*. Where an instruction has been asked for by a party, and is modified by the court so as to conform exactly to another instruction asked for by such party and given by the court he cannot be heard in the appellate court to object to the modification which thus conforms to what he has asked for and obtained.

3. RAILROAD COMPANIES—*Duty to persons in danger*—*Proper care and diligence*—*Case at bar*. When the agents or servants of a railroad company in charge of a moving train see a person in a position of danger, or might, by the use of due diligence have seen him, it is their duty to exercise proper care and due diligence to stop the train and prevent it from striking him. But what is proper care and due diligence is to be determined by the facts and circumstances of the particular case. In the case at bar, the decedent who attempted to cross the track in front of a rapidly moving train, by his own negligence and recklessness, directly and proximately contributed to his own death.